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STATE CONTRACTORS BOARD

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations
of
The State of Nevada Contractors Board

The State of Nevada Contractors Board (Board) will conduct a public workshop on Thursday, January 30, 2020 at 9:00 a.m. and a public hearing on Thursday February 6, 2020 at 1:00 p.m. The workshop and hearing will be video-conferenced between the Board's Henderson office located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, Reno, Nevada, 89511.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

The purpose of the proposed regulation is to amend Chapter 624 of the Nevada Administrative Code to revise the Board's rules of practice which were reviewed in accordance with NRS 233B.050. As a result of this review, it was recognized that clarifying and streamlining changes would enhance the rules of practice, modernize some aspects of the rules to recognize trends and technology improvements, and to remove uncertainty. In addition, AB440 (2019) created an additional disciplinary action regarding builder's warranties. Thus, the regulation establishes an administrative fine range assessment for violating this provision as well as an administrative fine range for violating NRS 624.30165.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.

The proposed regulation changes certain provisions related to disciplinary matters before the Board.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

There is no economic effect on the public. The economic effect upon NRS Chapter 624 licensees is limited to minor compliance-related issues typically limited to timing requirements as opposed to the expenditure of money. Further, contractors subject to discipline after notice and an opportunity to be heard may be impacted by regulations imposing fines as authorized by Nevada statutes.

(b) Both immediate and long-term effects.

There is no immediate economic effect. Long term economic effects will depend upon the number of contested cases that come before the Board; however, the clarification and streamlining of processes created by the regulatory revisions are expected to immediately and continuously reduce overall costs of practice before the Board to licensees and the Board with no expected reduction in the protections for the public's health, safety, and welfare.

4. The estimated cost to the agency for the enforcement of the proposed regulation.

Cost to the agency should be minimal.

- 5. A description of and citation to any regulations of other states or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication and overlapping is necessary.**

The proposed regulation does not overlap or duplicate any regulation.

- 6. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

Does not apply.

- 7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

Does not apply.

- 8. Whether proposed regulation establishes a new fee or increases an existing fee.**

The regulation creates a new minimum and maximum fine for violation of NRS 624.30165 and expands fines for the violation of Subsection 3, 5, 10 or 11 to include subsection 12 of NRS 624.3016. The administrative fine ranges proposed for these violations are authorized by NRS 624.300.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public workshop or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, Reno, Nevada, 89511. Written submissions must be received by the Board five days prior to the scheduled workshop. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors Board 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, Reno, Nevada, 89511. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Upon adoption of any regulation, the board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Paseo Verde Library
Sawyer State Building
Clark County Library
Offices of the State Contractors Board in Reno and Henderson
The Board's website www.nscb.nv.gov
State of Nevada Public Notice Website

Dated: December 11, 2019

Small Business Impact Statement

Proposed Regulations R014-19

1.0 Overview

The Nevada State Contractors Board (NSCB or Board) proposes revisions to the Administrative Code regarding the rules of practice before the Board. The revisions are the result of a three-year review of rules of practice regulations required by NRS 233B.050.

The Nevada State Contractors Board has determined that the proposed regulation revisions should not have an adverse economic impact upon a small business. The proposed regulation changes are not expected to negatively impact the formation, operation, or expansion of a small business in Nevada.

2.0 Authority

This small business impact statement is made pursuant to NRS 233B.0608 and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business and provides the reasons for the conclusions of the agency followed by the certification by the person responsible for the agency.

3.0 Background

Nevada law permits the creation of regulations regarding rules of practice before an agency. NRS 233B.050(1). However, “each agency shall...(d) review its rules of practice at least once every 3 years.” *Id.* The Board’s rules of practice regulations are enrolled as NAC 624.6975 to NAC.7293. In the first quarter of calendar 2019, the Board began reviewing its rules of practice as required by statute. This review revealed several at-the-margin changes that could streamline and clarify practice before the Board.

After the 80th Legislative Session closed in 2019, further review of the rules of practice regulations was undertaken to confirm that the rules reflected revisions to Nevada law. As a result of this further review, additional revisions were recommended to reflect 2019’s statutory changes.

4.0 Method used to determine no small business impact

Pursuant to NRS 233B.0608, the Nevada State Contractors Board made a concerted effort to determine whether the proposed regulation changes were likely to: 1) impose a direct and significant economic burden upon a small business, or 2) directly restrict the formation, operation, or expansion of a small business. As a result of this effort, the NSCB determined that there is no impact upon small business as a result of the proposed regulation changes.

To reach this conclusion, the NSCB recognized that the rules of practice are rules of limited applicability because these rules concern the NSCB’s contested matters. Thus, any NRS Chapter 624 licensee seeking guidance from the rules of practice has been charged with statutory violations of the contracting statutes regarding contractor discipline. See NRS 624.300, et seq. (establishing contractor discipline). Of the limited pool of licensees that are affected by the rules

of practice, the clarifying and streamlining of the rules of practice is likely to reduce the economic burdens of a contested matter before the Board and to increase the consistency and predictability of contested matter processes. Thus, the NRS Chapter 624 licensees who find themselves in a contested matter before the NSCB are likely to see lower regulatory burdens as a result of the proposed changes.

No small business would endure any direct or significant economic burden related to the NSCB's proposed changes to its rules of practice. Instead, the clarification and streamlining of the rules of practice is more likely to reduce potential costs upon small business. Likewise, no small business was likely to be affected by revisions to the rules of practice in the small business's formation, operation, or expansion. Finally, clarification and streamlining of the rules of practice is likely to increase the public's trust in the Board's contested matter process thereby promoting business formation, operation, and expansion.

Ultimately, no adverse economic effects were identified because the proposed regulation changes clarify and streamline practice before the Board. Thus, the regulatory revisions are expected to immediately and continuously reduce overall costs of practice before the Board to licensees and the Board with no expected reduction in the protections for the public's health, safety, and welfare.

5.0 Certification by Person Responsible for the Agency

I, Margi Grein, Executive Officer of the Nevada State Contractors Board, certify to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in this statement was prepared properly and is accurate.

Signature Margi Grein Date DECEMBER 11, 2019

**REVISED PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

LCB File No. R014-19

December 5, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 2, 4-7, 9-12, 19-25 and 27-31, NRS 624.100; §3, NRS 624.100 and 624.3013; §8, NRS 624.100 and 624.335; §§13 and 17, NRS 624.100, 624.341 and 624.361; §§14 and 16, NRS 624.100 and 624.341; §15, NRS 624.100, 624.300, 624.3016, 624.341, 624.361 and 624.710; §18, NRS 624.100, 624.300 and 624.341; §26, NRS 624.100 and 624.170.

A REGULATION relating to contractors; revising provisions relating to disciplinary action by the State Contractors' Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Contractors' Board to make reasonable regulations. (NRS 624.100) Existing regulations establish procedures for disciplinary action and practice before the Board. (NAC 624.6975-624.7296) **Section 2** of this regulation defines "suspend" as imposing a temporary prohibition against a licensee engaging in work as a contractor. **Section 3** of this regulation establishes a rebuttable presumption that a misrepresented or omitted material fact by an applicant or licensee is not exculpatory. Existing regulations authorize the Board to place a contractor on probation in certain circumstances. (NAC 624.710) **Section 4** of this regulation authorizes the Board to place a contractor whose license may be suspended or revoked on probation so that the contractor may complete the contractor's existing construction projects under conditions deemed necessary to protect the public, the construction project and the owner of the construction project. Existing regulations require the Board to notify a licensee if the Board believes the licensee's financial responsibility is impaired or that the licensee is in violation of state law or regulations. (NAC 624.720) **Section 12** of this regulation authorizes the Board to set a hearing regarding the licensee's financial responsibility or alleged violation of state law or regulations.

Existing law and regulations authorize the Board to establish and impose certain administrative fines and issue citations. (NRS 624.300, 624.3016, 624.341, 624.361, 624.710; NAC 624.7251) **Section 15** of this regulation establishes a new administrative fine for a

a citation. Existing regulations authorize the Board to consolidate two or more contested cases in certain circumstances. (NAC 624.7269) **Section 24** of this regulation also authorizes the Executive Officer or the Board's designee to consolidate such cases. **Sections 5-10, 14 and 30** of this regulation make conforming changes.

Section 1. Chapter 624 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. ***"Suspend" means to impose a temporary prohibition against a licensee engaging in work as a contractor pursuant to chapter 624 of NRS.***

Sec. 3. ***The misrepresentation or omission of a material fact to the Board by an applicant or a licensee creates a rebuttable presumption that the misrepresented or omitted material fact is not exculpatory.***

Sec. 4. ***If the Board or its designee has grounds to suspend or revoke a contractor's license or otherwise discipline a contractor, the Board or its designee may place the contractor on probation until the contractor completes the contractor's existing construction projects or portions thereof under conditions deemed necessary by the Board to protect the public, the construction project and the owner of the construction project. The Board or its designee may thereafter suspend or revoke the contractor's license or otherwise discipline the contractor.***

Sec. 5. NAC 624.6975 is hereby amended to read as follows:

624.6975 As used in NAC 624.6975 to 624.7296, inclusive, ***and sections 2, 3 and 4 of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 624.6978 to 624.6987, inclusive, ***and section 2 of this regulation,*** have the meanings ascribed to them in those sections.

Sec. 6. NAC 624.6978 is hereby amended to read as follows:

(c) Require the licensee to appear before the Board and show cause why disciplinary action should not be taken against the licensee; and

(d) Take such other actions as the Executive Officer deems appropriate under the circumstances.

Sec. 9. NAC 624.710 is hereby amended to read as follows:

624.710 1. The address of an applicant or licensee which is on file with the Board shall be deemed to be ~~his or her~~ *the* correct address ~~[-An]~~ *of the applicant or licensee.*

2. Within 30 days after any change of address, an applicant or licensee shall provide to the Board ~~[-within 30 days,]~~ written notice of any change of ~~his or her~~ address ~~[-~~

~~2. If the Board has grounds to suspend or revoke a contractor's license or otherwise discipline a contractor, the Board may place the contractor on probation until the contractor completes his or her existing contracts and may thereafter suspend or revoke his or her license or otherwise discipline the contractor.]~~ *of the applicant or licensee.*

Sec. 10. NAC 624.713 is hereby amended to read as follows:

624.713 1. A notice that the Board provides to a licensee pursuant to NAC 624.7256 will include:

(a) A copy of the complaint;

(b) The date by which the licensee is required to submit an answer or responsive pleading and any supporting documents to the Board;

(c) A statement that the licensee is entitled to a hearing only if the licensee complies with the provisions set forth in paragraph (b); and

4. If the Board *or its designee* enters a default order against the licensee, the Board *or its designee* will:

(a) Send to the licensee by certified mail, return receipt requested, a copy of the default order, including any findings of fact and conclusions of law, not later than ~~10~~ 7 days after the Board enters its order; and

(b) Take such disciplinary action against the licensee as it deems appropriate.

5. A licensee against whom a default order is entered may submit to the Board a written request for reconsideration of the order not later than ~~15~~ 14 days after receiving a copy of the order. The written request must set forth the reasons for reconsideration by the Board ~~H~~ *or its designee*.

6. The Board or its designee will review the request to determine whether there is good cause for reconsideration of the order. If the Board or its designee determines that good cause for reconsideration exists, the Board or its designee will schedule a hearing and notify the licensee, in writing, of the time and place of the hearing. *The Board or its designee will schedule the hearing for not later than 90 days after the decision granting reconsideration of the order is made.*

Sec. 12. NAC 624.720 is hereby amended to read as follows:

624.720 If the Board believes that a licensee's financial responsibility is impaired or that ~~he or she~~ *the licensee* is in violation of chapter 624 of NRS or this chapter, the Board will so notify the licensee ~~H~~ *and may set a hearing regarding the financial responsibility of the licensee or the alleged violation by the licensee of chapter 624 of NRS or this chapter.*

Sec. 13. NAC 624.725 is hereby amended to read as follows:

Sec. 14. NAC 624.72505 is hereby amended to read as follows:

624.72505 A written administrative citation issued pursuant to NRS 624.341 may be withdrawn:

1. By the Board at any time.

2. By the Executive Officer : ~~{of the Board:}~~

(a) Before the citation is deemed a final order of the Board pursuant to NRS 624.345; or

(b) If the cited person contests the citation, before the commencement of the hearing required pursuant to NRS 624.351.

Sec. 15. NAC 624.7251 is hereby amended to read as follows:

624.7251 1. If the Board or its designee issues an order imposing an administrative fine pursuant to the provisions of this chapter and chapter 624 of NRS, each such fine assessed by the Board or its designee must:

(a) Specify the violation for which the person is being cited; and

(b) Subject to the provisions of subsections 2, 3 and 4, be in an amount which is not less than the minimum amount or more than the maximum amount as follows for the violation:

Violation	Minimum Fine	Maximum Fine
NRS 624.301.....	\$1,000	\$10,000

Violation	Minimum Fine	Maximum Fine
<i>NRS 624.30165.....</i>	<i>250</i>	<i>10,000</i>
Subsection 1 of NRS 624.3017.....	500	10,000
Subsection 2 of NRS 624.3017.....	50	10,000
Subsection 3 of NRS 624.3017.....	100	10,000
Subsection 1 of NRS 624.302.....	1,000	50,000
Subsection 5 or 6 of NRS 624.302	250	10,000
Subsection 7 of NRS 624.302.....	1,000	10,000
Subsection 1 of NRS 624.305.....	1,000	50,000
NRS 624.520.....	100	250
Subsection 1 of NRS 624.700.....	1,000	50,000
Subsection 1, 3 or 4 of NRS 624.720	1,000	50,000
NRS 624.740.....	1,000	50,000

2. In determining the amount of an administrative fine to be imposed pursuant to subsection 1, the Board or its designee will consider the factors set forth in paragraphs (a), (b) and (c) of subsection 4 of NRS 624.300 and paragraphs (a), (b) and (c) of subsection 2 of NRS 624.710, as applicable.

3. Unless otherwise prohibited by law, the Board or its designee may reduce or stay a fine assessed pursuant to subsection 1 ***or any other penalty imposed pursuant to this chapter or***

3. A determination by the Executive Officer or his or her designee that the licensee is able to perform the corrective action.

Sec. 17. NAC 624.72514 is hereby amended to read as follows:

624.72514 In determining the time permitted for compliance with an order for corrective action ~~[, as required to be stated in a written citation]~~ *issued* pursuant to NRS 624.341, the Board *or its designee* will determine the time for compliance with the order by considering, without limitation:

1. The accepted industry practice regarding the performance of the work necessary to comply with the order for corrective action, in the climate or weather conditions of the area in which the construction project is located.

2. The number of days during which the owner of the construction project will make the site of the construction project available for the contractor to comply with the order for corrective action.

3. The time necessary to obtain materials required for the contractor to comply with the order for corrective action.

Sec. 18. NAC 624.72518 is hereby amended to read as follows:

624.72518 If a licensee ~~[who]~~ is issued an administrative citation pursuant to NRS 624.341 ~~[which]~~ *that* includes an order for corrective action *and the cited licensee* hires and pays another licensee to perform the corrective action pursuant to subparagraph ~~[(3)]~~ *(2)* of paragraph (f) of subsection 1 of NRS 624.300, the cited licensee ~~[is]~~ *and the hired licensee are jointly* responsible for any failure of the hired licensee to comply with the order for corrective action included in the citation.

3. An objection that any notice required by NAC 624.6975 to 624.7296, inclusive, *and sections 2, 3 and 4 of this regulation*, was not provided in the manner set forth in those provisions will be deemed waived unless the objection is raised by the respondent before the introduction of any evidence into the record at a hearing of the Board.

Sec. 21. NAC 624.7259 is hereby amended to read as follows:

624.7259 1. The Executive Officer ~~{of the Board}~~ may add or dismiss a cause for disciplinary action against a respondent before the Board *or its designee* holds a hearing on that cause of action.

2. The Board or the Executive Officer ~~{of the Board}~~ may amend a complaint at any time. Notice of an amended complaint must be given in the same manner as a notice of an original complaint. The Board will grant a continuance if an amendment materially alters the complaint in such a way that the respondent will be unable to prepare ~~{his or her}~~ *the respondent's* case in a timely manner.

3. The Executive Officer ~~{of the Board}~~ may withdraw a complaint at any time before the Board holds a hearing on the complaint. After the hearing is commenced, only the Board may withdraw a complaint.

Sec. 22. NAC 624.7263 is hereby amended to read as follows:

624.7263 1. A respondent or ~~{his or her representative}~~ *a respondent's attorney* may request a continuance of a hearing upon a showing of good cause. A request for a continuance must be submitted to the Executive Officer ~~{of the Board}~~ in writing on a form prescribed by the Board. The request must be received by the Executive Officer at least ~~{10}~~ *14* days before the hearing.

consolidation. The presiding officer of the hearing will determine the order of procedure at a consolidated hearing.

Sec. 25. NAC 624.7273 is hereby amended to read as follows:

624.7273 1. A party may only make those motions set out in subsection 2 of NRS 622A.360. A motion, unless made at a hearing, must be made in writing.

2. A written motion must set forth the nature of the relief requested and the grounds for the relief.

3. A party who wishes to oppose a motion must serve and file a written response to the motion not later than ~~10~~ 14 days after receiving the motion.

4. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.

5. The Board or its designee may issue a decision on a motion without oral argument.

6. If the Board or its designee wishes to oppose a motion, the Board or its designee is not required to serve or file a written response to the motion.

Sec. 26. NAC 624.7276 is hereby amended to read as follows:

624.7276 1. A party may apply to the Board for the issuance of a subpoena pursuant to NRS 624.170. An application for the issuance of a subpoena must:

- (a) Be submitted in writing;
- (b) Include a statement of the facts that demonstrate the reasons why the subpoena is necessary; ~~and~~
- (c) *Identify with reasonable particularity the document, identity of the witness or other evidence sought by the subpoena;*

624.7279 1. Any party who appears at a hearing may represent himself or herself or may be represented by an attorney licensed to practice law in this State.

2. Each person who appears at a hearing shall comply with the standards of ethical and courteous conduct required in the courts of this State. If a person fails to comply with those standards of conduct, the Board may:

(a) Exclude the person or ~~his or her~~ *the person's* representative from the hearing; or

(b) Terminate the hearing.

3. If a party is represented by an attorney, *upon reasonable demand* the Board will provide to the attorney any notice, document or other paper that the Board is required to provide to the party.

4. An attorney may withdraw from representing a party if the attorney provides written notice of his or her withdrawal to the Board and the party whom he or she represented.

5. The Board *or its designee* may refuse to consider any documentary evidence or exhibit presented by a party at a hearing if the evidence or exhibit was not *reasonably* provided to ~~the staff of the Board at least~~ *an opposing party. Documentary evidence provided* 10 ~~calendar~~ *or more* days before the date of the hearing ~~It~~ *is presumed to have been reasonably provided.*

Sec. 28. NAC 624.7283 is hereby amended to read as follows:

624.7283 1. The failure of a party to appear at a hearing shall be deemed a waiver of the party's right to present evidence ~~It~~ *at a hearing of the Board.* After presentation to the Board *or its designee* of an offer of proof that the absent party was given proper notice, and upon a determination by the Board *or its designee* that proper notice was given to the absent party, the

2. A party who is surprised by the testimony of a witness, called in good faith as a witness on ~~his or her~~ behalf ~~of~~ *of the party*, may question the witness as if conducting a cross-examination.

3. All testimony to be considered at a hearing must be taken under oath.

Sec. 31. NAC 624.7293 is hereby amended to read as follows:

624.7293 Except as otherwise provided by law:

1. A petition for a rehearing or reconsideration of a decision *and order* issued by the Board *or its designee* must be served on all parties not later than ~~15~~ *14* calendar days after the date of service of a copy of the decision ~~and order~~ *and order*. The petition must state the specific grounds upon which relief is requested.

2. Any responses to a petition must be served not later than ~~15~~ *14* calendar days after the receipt of the petition.

3. If a respondent submits a petition for reconsideration of a decision issued by the Board ~~or its designee~~ *or its designee*, the Board or its designee will review the petition to determine whether there is good cause for a reconsideration of the decision.

4. If a respondent submits a petition for a rehearing and wishes to present new evidence, the respondent must provide to the Board *or its designee* a statement setting forth the reasons for ~~this or her~~ *the respondent's* failure to introduce the new evidence at the previous hearing and a detailed description of the new evidence proposed to be introduced.

5. The Board or its designee will review a petition for a rehearing or reconsideration. A decision concerning the petition will be made not later than ~~15~~ *14* calendar days after the petition is filed with the Board. If a new hearing is ordered, the decision concerning the petition